

UNITED STATES
v.
ARMIN SPECKERT

IBLA 79-452

Decided June 26, 1981

Appeal from a decision of Administrative Law Judge R. M. Steiner in contest No. SAC 060277-S finding mining claim not supported by discovery as of July 23, 1955, and that land embraced in claim is subject to Federal management.

Affirmed.

1. Mining Claims: Hearings -- Rules of Practice: Evidence -- Rules of Practice: Hearings

To warrant a further hearing in a mining claim contest based upon an asserted lack of discovery, an appellant must make an evidentiary tender of proof of discovery. Vague and unsupported assertions of mineralization do not establish equitable justification for reopening the hearing.

APPEARANCES: Robert C. Lenhard, Esq., Marysville, California, for appellant.

OPINION BY ADMINISTRATIVE JUDGE LEWIS

Armin Speckert on June 6, 1979, appealed from the decision by Administrative Law Judge R. M. Steiner dated May 4, 1979, finding the mining claimant failed to prove a valid discovery and that the claim, 1/ therefore, was not validated as of July 23, 1955. In his statement of reasons filed July 9, 1979, appellant argues prejudicial

1/ Appellant's claim is the Glacier, a.k.a. Glazier, placer mining claim situated in portions of secs. 9 and 16, T. 26 N., R. 8 E., Mount Diablo meridian, Plumas County, California.

error by the Judge in refusing to permit the hearing to be reopened so that appellant could present additional evidence.

The proceeding was brought under section 5 of the Surface Mining Resources Act of July 23, 1955 (69 Stat. 367, 30 U.S.C. §§ 611-615 (1976)). At the hearing, held on November 1, 1978, counsel for claimant stated that a Mr. Meyers, whom he apparently regarded to be his main witness, was not available to attend the hearing. 2/ Claimant's counsel contended it was necessary to have Meyers' testimony. At the hearing the Judge ruled he would hold the record open for 30 days for claimant to file a motion to reopen the hearing; that such motion must be accompanied by an affidavit or statement which on its face showed that there was a discovery on the claim as of July 1955, and that a discovery continued in existence to the "present time" (November 1, 1978); and that if such affidavit or statement were not submitted, the motion would be denied and the case would be decided on the record made at the November 1, 1978, hearing.

On December 1, 1978, appellant filed his motion to reopen the hearing. It was accompanied by a signed declaration from A. Speckert, Sr., and by one from Nelson F. Berry. In his statement Speckert recited that some \$45 worth of gold was removed from the claim some years ago and that the claim might yield over 2 ounces of gold per ton of material. Berry stated that several years ago gold valued at approximately \$30 was removed from the claim, and that on November 29, 1978, \$15 worth of gold was removed from the claim.

2/ The transcript at page 6 states:

"MR. LENHARD: He [Meyers] claimed that he has been told to leave his residence, okay? That he has received a notification and he sold his house and must be out by a certain date, that he is involved in a construction project at a stage which he cannot leave and he cannot delegate.

"And I will say on the record we offered to pay him all the cost and expenses of the construction crew and not just a daily appearance, any and all of his expenses in connection with the construction project that is going on. He said that his personal appearance or attendance to that project was absolutely indispensable, that he could not avoid it.

"Frankly, that is hard for me to accept, but I want it on the record that we offered to pay all of his ongoing expenses so he wouldn't lose anything and would be paid for his time here. He said his personal attendance to this project was too critical, that it was depending on the weather and he had to get it done.

"JUDGE STEINER: Do you have any other witnesses here today?

"MR. LENHARD: Mr. Speckert.

"JUDGE STEINER: Will you put his testimony on today?

"MR. LENHARD: Yes, I will.

"JUDGE STEINER: Very well. Let's go ahead with the evidence then, and I will take this motion to take the testimony of Mr. Meyers at some future date under advisement."

Without any explanatory remarks, the Judge by an order on March 1, 1979, denied the motion to reopen the hearing. It was served on appellant on March 2, 1979. On May 4, 1979, the Judge issued his decision based on the November 1, 1978, hearing. In his decision he found the claim was not supported by a discovery of a valuable mineral deposit as of July 23, 1955, and that the land embraced by the claim was therefore subject to Federal management pursuant to section 4 of the Act. See 30 U.S.C. § 612 (1976).

[1] Generally, to warrant a further hearing where the question of discovery is at issue, an appellant must make an evidentiary tender of proof of discovery. United States v. Gray, 50 IBLA 209 (1980); United States v. Mattox, 36 IBLA 171 (1978). Appellant's submissions of unsupported allegations are of negligible probative value. Had these statements been entered into the record before the Judge, they would have been insufficient to overcome the prima facie case of lack of discovery presented by the Government (Decision of Judge Steiner at 2-3).

As previously indicated, the contest was brought under section 5 of the Surface Resources Act of July 23, 1955. Under that Act, the effect of a decision that no mineral discovery had been shown is to permit the Government to manage and dispose of the vegetative and other surface resources without disturbing claimant's right to develop his mining claims by using the subsurface and surface to the extent necessary to conduct his mining operations. United States v. Bartell, 31 IBLA 47 (1977). Thus, appellant is not precluded from further activities upon the claim.

We conclude that no equitable justification for an additional hearing has been shown, and that the Judge properly declined to reopen the hearing.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the order appealed from is affirmed.

Anne Poindexter Lewis
Administrative Judge

We concur:

James L. Burski
Administrative Judge

Gail M. Frazier
Administrative Judge

